

TOWN OF SOMERS
ZONING BOARD OF APPEALS
SPECIAL MEETING
AUGUST 8, 2023
7:00 P.M.
HELD IN TOWN HALL AUDITORIUM

MINUTES

(NOT OFFICIAL UNTIL APPROVED AT SUBSEQUENT MEETING)

Call to order 7 p.m.

ROLL CALL

Present: Chairman Dean Hills, members Doug Stebbins and Dan Thayer, and alternates BJ Ferro, Susan Peck, and Ralph Williams.

Absent: Members Joseph Marinaccio and Andy Rockett.

Chairman Dean Hills designated alternates Susan Peck and Ralph Williams to sit on the evening's application and directed Mr. Williams to keep the minutes of the meeting in the absence of the board's secretary, Andy Rockett.

PUBLIC HEARING

ZBA23-005 120 Watchaug Road LLC, 120 Watchaug Road, Somers — Appeal of zoning enforcement officer's denial of application to construct a 76-by-120-foot/approximately 9,000-square-foot utility building replacing an approximately 3,500-square-foot demolished utility building.

Representing the appellant were Owen Jarmoc, an owner of 120 Watchaug Road LLC and a principal of its parent company, Jarmoc Farms, and Attorney Derek E. Donnelly. Also present on the appellant's behalf was Attorney Dwight Merriam, who did not speak during the hearing.

Attorney Donnelly submitted an outline of the appellant's objections to the application's denial, along with 30 exhibits, which were entered into the record.

The Zoning Board of Appeals originally granted a variance in 1972 to the then-owner of the property in question, the LaChance Potato Company, permitting the construction of a runway and a tee hangar to accommodate two small planes for business use, specifically commuting to that company's farms in Maine. While a subsequent owner did not make continuous use of the runway facilities, the runway has remained an FAA-designated and Connecticut Airport Authority-recognized airstrip throughout that time, and Attorney Donnelly submitted a letter from that former owner stipulating that it was never his intention to abandon the use for which the 1972 variance had been granted.

Although the LaChance variance stipulated that it was the owner's intent for the variance to run only with his possession of the property, Attorney Donnelly also submitted a 2000 legal opinion from Town Attorney Carl Landolina, to the effect that under state law, the variance runs with the property itself, regardless of the owner.

Attorney Donnelly also submitted correspondence from October 2022 between Owen Jarmoc and Somers' building official at the time, Daniel Parisi, who granted a permit for repaving the airstrip, along with a contractor's invoice for the completion of that repaving, and minutes of a February 2023 meeting of the Somers Board of Selectmen, which approved signs cautioning motorists about low-flying aircraft in the vicinity of 120 Watchaug Road.

Attorney Donnelly also presented the letter in which Zoning Enforcement Officer Jennifer Roy denied 120 Watchaug Road's application to construct the utility building. Among the grounds she cited were: the property's location in the A-1 zoning district, where aircraft-related facilities are not permitted; the lack of a filing of the 1972 variance on the Somers land records; the current owner's plans for a far larger utility building than the one constructed under the 1972 variance; and the LaChance company's 1972 stipulation that the variance should only run with its ownership of the property.

Attorney Donnelly submitted a letter from Marshall K. Berger, a former Superior Court judge who oversaw the state court system's land use docket prior to his retirement. Judge Berger, now an attorney in private practice, offered a point-by-point rebuttal of Ms. Roy's grounds for denial. Among his observations:

- While the 1972 variance allowed for a building to house the LaChance company's two airplanes, it did not stipulate the building's size. He also contended that since 120 Watchaug Road LCC also plans to house only two airplanes — although of much larger size — the application does not envision a change in the character of the use allowed under the 1972 variance. He added that current federal workplace-safety regulations require washing and storage components not mandated in 1972.
- While state law now requires the filing of a variance on the land records, there was no such statutory requirement in 1972.
- Despite the stipulation of the LaChance company's lawyer in 1972 that the variance would be "personal" and not tied to any future owner, Connecticut state law was amended in the intervening years to stipulate that a variance runs with a property itself, rather than its ownership.

Owen Jarmoc told the board that Jarmoc Farms, a grower of cigar tobacco, will be using its aircraft for business purposes, specifically to commute to and from tobacco-growing regions of Mexico and Central America.

The board's chairman, Dean Hills, opened up the hearing for public comment, while adding that because of the voluminous exhibits submitted in connection with this appeal, he envisioned continuing the hearing to the board's next meeting in September.

Attorney John Parks spoke, saying he was expressing concerns of some neighbors. When he was asked to specify the neighbors on whose behalf he was speaking, he identified them as the owners of two Cantlewood Drive residences: Michael and Maureen Parks and Paul and Mary Jane Russell.

Attorney Parks argued that the application would be an illegal expansion of the property's use and structures. He noted that Jarmoc Farms' planes are larger with greater passenger capacity than those owned by the LaChance company. He said that the applicant's plans call for much more intense use of the property. He also claimed that the repaved airstrip is wider than the original runway — a claim disputed by Owen Jarmoc and Attorney Donnelly.

Attorney Michael Zizka, representing Zoning Enforcement Officer Jennifer Roy, then addressed the board. He began by saying that the appellant ideally should be seeking a modification of the 1972 variance, rather than appealing Ms. Roy's denial of its application for a new building. A modification of the variance, he argued, would allow the board to specify the extent and limits of the property's use.

He also stressed that despite Attorney Berger's past judicial service, his letter rebutting Ms. Roy was offered in the role of an advocate rather than of a judge and that it was grounded only on information provided by the appellant. He then offered his own point-by-point defense of Ms. Roy's denial.

He stressed that the original building's dimensions were stipulated in the LaChance company's variance application, even if they weren't spelled out in the subsequently approved variance. He also said that variances are meant to be as limited in scope as possible to prevent abuse, and he defended her rejection of plans for a larger utility building by citing a state Supreme Court decision from 2013, which said that a building covered by a variance could not be expanded beyond the "footprint" stipulated therein.

Attorney Zizka also cited a provision of the Somers zoning regulations, unmentioned by Attorney Berger's letter, stipulating that any replacement of a nonconforming structure that has been destroyed or demolished may be no larger than the original structure. Ms. Roy, he said, had concluded that no owner of the property at issue should be able to do more with it than what the LaChance company had said it planned to do. He concluded that the 1972 variance wasn't broad enough to allow the changes planned by the appellant, and he warned that if the board grants the appeal, a subsequent owner of the property would be able to seek even bigger, more expanded use of the property.

Ms. Roy informed the board that she had been submitted a large number of letters in support of the appellant, which she will make available to the board and the public.

Mr. Williams then made a motion to continue the public hearing to the board's Sept. 12 meeting, which was seconded by Mr. Thayer. The motion passed unanimously.

OTHER BUSINESS

The board agreed to table approval of the minutes of its June 27 special meeting until next month.

ADJOURNMENT

Mr. Stebbins made a motion to adjourn, which was seconded by Mr. Thayer. The motion passed unanimously, and the meeting adjourned at 8:40 p.m.

Respectfully submitted by Ralph Williams, serving as secretary in the absence of Andy Rockett.